

MAR 07 2023

Clerk, U.S. Courts
District of Montana
Missoula Division

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION

STEPHEN P. KELLY,
General Delivery,
U.S. Post Office,
Harlan, Iowa 51537,
Plaintiff,

vs.

MERRELL FOOTWARE INC., an
Indiana corporation, and
YELLOWSTONE SPORTS RETAILER,
L.L.C., 1400 Industry Road,
Richmond, Indiana 47374, and
1406 W. Park Street, Ste. #22,
Livingston, Montana 59047,
Defendant(s).

CIVIL COMPLAINT

COMES NOW the Plaintiff in the above styled action and does show cause for complaint as follows:

(1) This is an action sustained by, STEPHEN P. KELLY, hereinafter, Plaintiff KELLY, and sues the defendant's, individually, MERRELL FOOTWARE INC., an Indiana corporation, and YELLOWSTONE SPORTS RETAILER, L.L.C., alleging:

(A) Default in product, and product Liability. (B) Personal injury, and (C) false advertising.

PARTIES

(2) Plaintiff, STEPHEN P. KELLY, is a customer of the MERRELL FOOTWARE corporation, and made a financial purchase of a pair of MERRELL hiking type,

and ice secured advertised shoes, with the concise purchase being placed directly from the MERRELL contracted retailer, the YELLOWSTONE SPORTS outdoor store in Livingston, Montana.

(3) Corporate defendant's, the MERRELL FOOTWEAR Corporation, is an official manufacture of a diverse style of shoes, which obtains a widespread advertisement asserting that ALL MERRELL brand shoes are in fact guaranteed as, (a) waterproof, and (b) 100% safe from ice and snow slip and fall!

(4) Local business entity defendant's, the YELLOWSTONE SPORTS outdoor store, is an authorized retailer of the MERRELL shoe brand, and has in fact adopted the official MERRELL, guarantee of ice safe, and all MERRELL shoes existing as waterproof!!

NATURE OF THE CASE

(5) Any subject or principal corporation at which predicates a widespread and national advertising virtue upon an official business website, and upon an official face-book page, obtains civil liability within a federal district court at which the concise district upon which the purchase and events rose based upon diversity jurisdiction!

(6) An official authorized retailer whom which provides any sales and distribution of any product, with clear knowing, of the specific aspects upon which a product is in fact advertised by the manufacture, and agrees to sell and distribute a certain product with false pretence is in fact clearly a subject of civil liability!!!

JURISDICTION AND VENUE

(7) This federal court obtains jurisdiction over this case based upon diversity of citizenship, where the parties are citizens of different states. 28 U.S.C. § 1332¹.

(8) The parties at which obtains a corporation obtains its principal place of business in the foreign and diverse state of Indiana! The MERRELL FOOTWARE corporation, is a diverse state corporation and its base citizenship and corporate enterprise exists outside of the jurisdictional State of Montana.

(9) (citizenship) is still yet defined as a principal place corporation!

(10) Plaintiff, STEPHEN P. KELLY, is a citizen, and a resident of the diverse state of Iowa, and resided in Montana during such time of initial incident!

(11) corporate defendant's, MERRELL FOOTWARE INC., is an Indiana corporation, with its principal place of business in the sole state of Indiana!

(12) corporate defendant's, MERRELL FOOTWARE INC., obtains its principal place of headquarters within the diverse state of Indiana, however, obtains a widespread numeration of sales contracts with sporting and outdoor merchant's throughout the United States!!

(13) Defendant, YELLOWSTONE SPORTS RETAILERS, is an individual based retail carrier at which Sells an outdoor sporting type hiking shoe sold and manufactured by the primary corporate retailer -

the MERRELL FOOTWARE corporation, where the YELLOWSTONE SPORTS RETAILER, obtains its SOLE and principal place of business within the state of Montana - near the North Gate of YELLOWSTONE national park.

(14) The financial damage amount in dispute is in excess of \$75,000.

(15) Venue is proper in the district of Montana because each event giving rise to this action occurred in the district of Montana, 28 U.S.C. § 1391.

STATEMENT OF FACTS

(16) on Sunday - February, 2023, Plaintiff KELLY, was in fact removing snow upon his own residential driveway, upon such time at which he slipped and fell upon an icy platform utilizing a specific hiking and ice secured shoe, as was clearly advertised by the MERRELL

company out of Indiana,
including the adopted advertis-
ment at the hands of business
entity defendant's, Yellowstone
sports retailer in Livingston -
Montana, with a very clear
stipulation that the concise
type hiking shoe at which KELLY,
made purchase of was in fact an
ice and slip and fall secured
shoe and obtained a guarantee
per the Merrell corporation, and
the same qualified guarantee
by the specific merchant
selling the product, the
Merrell corporation out of
Indiana whom which is the
actual manufacture of this
specific hiking and ice secured
shoe!!! It is clearly plausible,
and cognizable that both
named defendant's here are
liable for the misconduct
alleged! Both defendant's, here
listed obtained clear foreknowledge
of the false pretence in which
to lure a customer into making
purchase of a Merrell brand
(hiking and ice secured shoe)!

(17) In Light of, and based solely upon both defendant's, advertising, Plaintiff KELLY, in 100% quality trust in such a well known, and widespread national software company, made purchase of the specific ice secured from Slip and Fall Shop, and in trust of defendant's (stipulation) of complete ice safety, guaranteed in which to walk upon slick ice, he, KELLY, in clear trust commenced in to walking and standing upon a layer of snow and ice in which to safely remove snow from his driveway, however, in sole results of both defendant's, false advertising, Plaintiff KELLY, did slip and suffered a harsh fall upon the hard ice on his driveway, causing severe injury to his back!! Both defendant's, are clearly liable here for the misconduct + alleged existing of an act of; (a) default in product; (b) personal injury, and (c) false advertising!

INJURY

(18) Plaintiff KELLY, in fact sustained severe injury upon his entire back and shoulder area, caused and brought upon by both defendant's false pretence of advertising!

(19) Plaintiff KELLY, SOLELY due to the slip and fall upon his icy driveway, caused by utilizing a Merrell type hiking shoe, and in 100% quality trust of the guarantee in which to remain standing upon any ice condition has in fact gained severe and unbearable pain during such time as sitting, or even now standing for any reasonable time frame what so ever!!

(20) Plaintiff KELLY, would prior to his injury, run several miles per day, including-hiking, swimming, playing tennis, and riding a bike twelve miles per day, however, in result of his recent injury caused by defendant's false advertising

PLaintiff KELLY, now has, and
will continue to suffer loss of
his once every day activity, which
has in fact brought upon mental
and emotional distress at which
will continue for a lengthy
time window for the remainder
of his natural life due to the
severe nature of a back injury,
sufficing mere common sense!!!

(21) Here, PLaintiff KELLY,
has clearly shown plausible
physical injury, caused solely at
the hands of both defendant's,
where this Honorable court can
also draw a reasonable inference
that here defendant's are
clearly liable for Plaintiff
KELLY's, injury, and pain and
suffering, where in light of
Plaintiff KELLY, being entitled
to providing medical document-
-ation during the discovery and
disclosure portion of this sincere
case prior to a civil jury trial
process, here further this
Honorable court can clearly draw
that KELLY's, claims here are
most certainly plausible,

instead of a mere possibility!!!

CLAIM ONE

(22) Defendant's false
advertising, and upon a clear
false pretence, has clearly
caused severe physical injury,
and emotional hardship upon
this Plaintiff!

CLAIM TWO

(23) Defendant's, are clearly
liable for product liability,
where the specific Merrell
type ice secured shoe as was
advertised is clearly not 100%
ice safe preventing slip and
fall!!

CLAIM THREE

(24) Personal injury rises here
where this Plaintiff trusted an
advertisement posted by both
defendant's, when the specific

Product advertised does not
meet the safety and ice secured
stipulation at which defendant's
predicated upon their customers,
here in this case Plaintiff
KELLY!

RELIEF

WHEREFORE, upon the premises considered, Plaintiff most respectfully request upon this Honorable court for the entry of a civil judgment as follows:

(A) Find this civil complaint PLAUSIBLE upon its face!

(B) Find that a clear cognizable legal theory exists where this Honorable court can in fact draw a reasonable inference that the defendant's are clearly liable for the misconduct here alleged.

(C) A civil jury trial is so requested.

(D) Award Plaintiff with actual damage awards in a financial amount of; \$900,000.

(E) Award Plaintiff with punitive damages in an amount as deemed proper by this court in single digits!

I Declare under penalty of perjury the foregoing to be true and correct.

Signed this 1st Day of March, 2023,

Stephen P. Keel
(SIGNATURE OF PLAINTIFF)